



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 534

W. J. RAY,

vs.

Petitioner,

THE UNITED STATES OF AMERICA.

BRIEF IN SUPPORT OF PETITION FOR WRIT.

I.

The opinion in the Circuit Court of Appeals has not been officially reported at the time of filing of this brief. The opinion is that of the Circuit Court of Appeals of the Eighth Circuit, and is dated and was filed on September 23, 1940, the opinion appearing in the transcript of the record (R. 310).

II.

The date of the judgment is September 23, 1940. Petition for rehearing was denied October 15, 1940 (R. 346). This petition, therefore, is filed within thirty days' period provided by Rule XI of the Rules governing the procedure in criminal cases.

III.

The specific claim advanced by the petitioner herein is that the Circuit Court of Appeals erred in holding that an improper communication between the court and the jury does not require a reversal, if it appears that the same was not prejudicial.

This ruling petitioner asserts is in conflict with applicable decisions of this Honorable Court:

Fillippon v. Albion Vein Slate Co., 250 U. S. 76, 63 L. Ed. 853, 39 S. C. R. 435;

Shields v. United States of America, 273 U. S. 583, 47 S. C. R. 478, 71 L. Ed. 787.

IV.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of Congress of February 13, 1925, U. S. C. A., Title 28, Section 347.

V.

The cases believed to sustain the jurisdiction of the Supreme Court are as follows:

Shields v. United States of America, 273 U. S. 583, 47 S. C. R. 478, 71 L. Ed. 787.

VI.

A complete statement of the case has been given in the petition, and is not repeated here for reasons of brevity.

VII.

The point upon which petitioner intends to rely in this case is specified as follows:

The Circuit Court of Appeals erred in finding and holding that an improper and erroneous communication between the

court and jury, made out of court and in the absence of the petitioner and his counsel, did not warrant a reversal because the same was non-prejudicial.

VIII.

The controlling fact that a communication between the court and jury pertaining to the case took place out of court and in the absence of petitioner and his counsel is without dispute.

The Circuit Court of Appeals in its opinion undertook to inquire into a collateral question; that is, whether or not such improper communication resulted in actual prejudice.

Petitioner believes that all such communications are forbidden, and that an inquiry as to whether or not prejudice actually resulted is not permissible.

The applicable decisions of this Court, by implication at least, appear to so hold.

Fillippon v. Albion Vein Slate Co., 250 U. S. 76, 63 L. Ed. 853, 39 S. C. R. 435;

Shields v. United States of America, 273 U. S. 583, 47 S. C. R. 478, 71 L. Ed. 787.

It is, therefore, respectfully submitted, that this case is one calling for the exercise of this Court of its supervisory power, and that a writ of certiorari should be granted, and this Court should review the decision of the Circuit Court of Appeals for the Eighth Circuit, and finally reverse it.

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